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REPORT
101-353

ASBESTOS SCHOOL HAZARD ABATEMENT REAUTHORIZATION ACT OF 1989

JUNE 28 (legislative day, JUNE 11), 1990.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1893]

The Committee on Environment and Public Works, to which was referred the bill (S. 1893) to authorize the Asbestos School Hazard Abatement Act of 1984 having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

GENERAL STATEMENT

S. 1893 extends authorizations for appropriations for the Asbestos School Hazard Abatement Act (ASHAA) for fiscal years 1991, 1992, 1993, 1994, and 1995 at $250,000,000 per year, including sums available in the Asbestos Trust Fund created by the Asbestos Hazard Emergency Response Act (AHERA). The bill requires that applications for Federal loans and grants be made available to local educational agencies (LEAs) by November 15 of each year, and that applications be approved or disapproved by April 30 of each year.

DISCUSSION

Authorizations

Since ASHAA was enacted in 1984, $245 million in loans and grants has been awarded to the Nation's primary and secondary schools to carry out asbestos abatement activities. In July of 1989, schools began to fully implement asbestos management plans, pursuant to the requirements of AHERA. Therefore, the need for financial assistance is likely to remain high in the next few years as

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schools undertake asbestos containment and removal projects. Accordingly, S. 1893 doubles the present authorization of appropriations from $125 million to $250 million per year, for five years, to provide assistance to schools least able to afford asbestos abatement activities. Further, money in the form of loan repayments is beginning to accumulate in the Asbestos Trust Fund. The budget submitted to Congress in January estimates that $16 million will be available for appropriations at the end of the current fiscal year and that $26 million will have accumulated by the end of fiscal year 1991. The Committee urges that this balance be used as part of annual appropriations for the program.

EPA information

In certain cases, where asbestos containing materials are in poor condition (friable) and located such that other abatement techniques will not work (such as encapsulation or enclosure), removal of the material may be the only effective method to assure that the health of students and school employees is protected. However, there is concern that asbestos removals may be taking place, in some cases, though less onerous and expensive techniques may be equally effective. An amendment offered by Senator Warner was adopted during Committee consideration of S. 1893, that requires the Environmental Protection Agency (EPA) to provide information or an advisory to the States and LEAs to improve understanding of:

The comparative risks associated with in-place management of asbestos and asbestos removal;

The least burdensome response actions to the presence of asbestos which are necessary to protect health, safety and the environment;

Circumstances in which asbestos removal is necessary to protect human health.

The first advisory is to be issued by EPA within 30 days of enactment. Subsequent advisories are to be issued as necessary to reflect new scientific information.

Loan and grant awards

A second issue which received extensive discussion during a hearing before the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development concerns the formula by which EPA awards loans and grants. ASHAA directs that Federal funds be provided to schools without the financial resources to undertake asbestos abatement, and outlines a series of factors that are to be taken into consideration in making that determination. State Governors are to consider the estimated per capita income of people living in the area served by an LEA; the cost of asbestos abatement compared to the total budget of the LEA; and the LEA's borrowing capacity.

S. 1893 adds another factor to the list, the costs of meeting the needs of "disadvantaged" students. It is intended that this term include students from low-income families, students with disabilities, and students with limited English proficiency. The practical effect is to institute recognition of the fact that schools serving a relatively large population of "disadvantaged" students may, as a result,

have a disproportionately high per student expenditure. This higher per student expenditure may negatively affect the school's ability to qualify for Federal asbestos abatement loans and grants, since a Governor's ranking of LEAs within a State is taken into account by EPA in addition to other factors in establishing financial need.

Another funding issue merits attention. It has been the practice of EPA to automatically reject the top 30 percent of applications received on the basis of per capita income. The cutoff point has been approximately $10,000 per capita. For private schools, EPA uses the per-pupil spending to eliminate the top 30 percent of the applicant pool. In some cases, this approach is flawed, particularly if schools are facing extraordinary asbestos abatement costs. Use of this cutoff point can sometimes result in needy schools being eliminated from the applicant pool. Financial need cannot be fully evaluated without considering the cost of an abatement project, the number of people available to share the burden, the additional costs of serving disadvantaged students, and other factors, such as the local cost of living which may result in inflated per-pupil expenditures or per-capita income.

EPA indicated in testimony before the Subcommittee that it is presently reassessing its funding policies and considering adoption of an "exceptions" policy to its per-capita and per-pupil cutoffs. The Committee is supportive of this effort and encourages EPA to make adjustments, as appropriate, in its funding criteria to accommodate the circumstances outlined.

EPA annual report

S. 1893 amends the annual EPA loan and grant reporting requirement under ASHAA to require submission of the report by June 1 of each year rather than February 1. This will enable EPA to incorporate information from the most recent loan and grant award cycle.

The bill also amends the report criteria to include an estimate of resources needed by schools, categorized by States, to all remaining asbestos hazards. EPA does not maintain records which would automatically show this information, since it is continued in each LEA's asbestos management plans which are not provided directly to EPA. However, it would be useful to have a rough estimate of remaining needs as part of the annual report to guide Congress in assessing the future needs for loans and grants. EPA could satisfy this requirement through taking a representative sample, possibly through the EPA regional offices to make a rough assessment of the remaining needs to carry out asbestos abatement activities by the States.

SECTION-BY-SECTION SUMMARY

Section 1.—Short title

"Asbestos School Hazard Abatement Reauthorization Act of 1989".

Section 2.—Findings and purposes

Nine findings set forth the—

Health risks from exposure to asbestos;

Potential exposure of 15 million school children and 1.5 million school employees to friable asbestos in more than 44 thousand school buildings;

The need for technical assistance and funding to support asbestos abatement in schools.

Four purposes of the Act include, continued EPA technical, scientific, and financial assistance to schools, states, and local agencies to carry out the asbestos abatement program; and protection of school employees who report asbestos hazards.

Section 3.—Amendments to ASHAA

Clarifies that amendments are to the Asbestos School Hazard Abatement Act of 1984 unless otherwise specified.

Section 4.—Asbestos Hazards Abatement Program

Requires EPA to distribute application forms (or notices of their availability) for financial assistance to all local educational agencies by November 15 of each year.

Section 5.—State records and priority lists

Clarifies the responsibility of State Governors to maintain records on the status of asbestos in schools including abatement actions.

Deletes references to the Department of Education, eliminating the requirement that States submit priority lists and applications for financial assistance to both EPA and the Department of Education.

In determining the adequacy of financial resources available to a local educational agency, governors are required to take into consideration the additional costs of meeting special needs of disadvantaged students.

Section 6.—Financial assistance

Requires the EPA Administrator to approve or disapprove applications for financial assistance by April 30 of each year.

In ranking applications for financial assistance, the Administrator is required to consider (among other factors) whether a proposed abatement action "uses the least burdensome methods which protect human health and the environment".

Deletes a reference to a Department of Education report.

Clarifies that financial assistance is prohibited if an applicant is not in compliance with the Asbestos Hazard Emergency Response Act (AHERA), or has sufficient resources to carry out asbestos abatement.

Clarifies that loan repayments are to be made to Treasury for deposit in the Asbestos Trust Fund.

Clarifies that applicants for financial assistance must be implementing asbestos management plans and utilizing certified personnel as required by AHERA.

Section 7.—Administrative provisions

Strikes certification and training provisions made obsolete by provisions of AHERA.

Clarifies that State and Federal worker protection laws are not affected by this title.

Section. 8.—Annual report

Make technical changes to an existing requirement that the EPA Administrator report to Congress annually on the ASHAA loan and grant program, and requires that an estimate of remaining resource needs for schools to abate remaining asbestos hazards, by State, be included in the report.

Section 9.—Recovery of costs

Requires that any proceeds which may occur if the U.S. sues on behalf of a school receiving ASHAA loans or grants be deposited in the Asbestos Trust Fund.

Section 10.—Definitions

Adds the definition of "response action" by reference to AHERA.

Section 11.—Authorization

Authorizes appropriation of $250 million in each fiscal year 91 to fiscal year 95, including sums available in the Asbestos Trust fund, for the asbestos abatement program. Imposes a ceiling of 5 percent for administration of the program including training and technical assistance. A discretionary authorization of 5 percent is provided to EPA for State grants to support reinspections for asbestos and conduct training.

Section 12.—Conforming amendments to Asbestos Trust Fund

Makes conforming amendments to AHERA Asbestos Trust Fund language to comport with those made in ASHAA respecting collection of proceeds from judgments in cases where the U.S. has sued on behalf of recipients of loan and grant awards.

Section 13.—Information or advisory

Amends AHERA to require EPA to distribute information, within 30 days of enactment, to States and local education agencies to improve public understanding of the comparative risks associated with in-place management of asbestos and asbestos removals; promote the least burdensome response actions to protect health and the environment, and describe the circumstances in which asbestos removal is necessary.

Section 14.—Technical amendments

Realigns section titles and subsection headings and corrects punctuation errors in ASHAA.

HEARINGS

The Subcommittee on Toxic Substances, Environmental Oversight, Research and Development conducted a hearing on S. 1893 and related issues, April 26, 1990. Testimony was received from Senator Wallop, Congressman Shays, EPA, NIOSH, academia, and several education organizations.

MARKUPS

The Subcommittee on Toxic Substances, Environmental Oversight, Research and Development conducted a business session on S. 1893, June 7, 1990. Senator Reid, Chairman of the Subcommittee offered two amendments. The first clarifies that applications (or notices of their availability) is to be made available to LEAs by November 15 of each year. The second authorizes appropriations from the Asbestos Trust Fund. Both amendments were adopted by voice vote. The bill was recommended to the full Committee by voice vote.

S. 1893 was considered by the Environment and Public Works Committee on June 12, 1990. An amendment was offered by Senator Warner, requiring EPA to provide information to the States and LEAs concerning various response techniques to asbestos containing materials. The amendment was adopted by voice vote. The bill was reported by voice vote.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report. No rollcall votes were taken during consideration of this bill.

REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires the Committee to evaluate the regulatory impact of the reported bill. It is not anticipated that this bill will impose a significant new regulatory burden.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 1990.

Hon. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1893, the Asbestos School Hazard Abatement Reauthorization Act of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1893.

2. Bill title: Asbestos School Hazard Abatement Reauthorization Act of 1989.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, June 12, 1990.

4. Bill purpose: S. 1893 would reauthorize the Asbestos Hazard Abatement Program within the Environmental Protection Agency (EPA). The bill would authorize the appropriation of $250 million each year in fiscal years 1991 through 1995 for the program.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorizations:					
Loans, grants, and administrative expenses	250	250	250	250	250
Repayments to the Asbestos Trust Fund			−1	−13	−13
Total authorizations	250	250	249	237	237
Estimated outlays	75	164	233	237	237

The costs of this bill fall within budget function 300.

Basis of estimate: For the purposes of this estimate, it is assumed that S. 1893 will be enacted late in fiscal year 1990 and that the full amounts authorized will be appropriated for each fiscal year. Outlays have been estimated on the basis of allocations specified in the bill, historical spending patterns, and information obtained from EPA.

Allocation of amounts authorized for appropriation

S. 1893 would authorize the appropriation of $250 million each year in fiscal years 1991 through 1995 from the general fund and the Asbestos Trust Fund. Of this amount, the bill would earmark up to five percent ($12.5 million) for EPA administrative activities and up to another five percent for grants to local educational agencies specifically for asbestos inspection and training activities. The remainder of the amounts authorized would be provided in the form of grants and loans to these agencies for asbestos removal. Based on the program's allocations in recent years, CBO assumes that about $68 million would be available annually in grants and $158 million in loans.

Repayment of loans to the Asbestos Trust Fund

Under existing law, loans made to local education agencies for the Asbestos Hazard Abatement Program bear no interest and must be repaid within 20 years. Repayments typically begin two years after EPA disburses each loan. Currently, the repayments are deposited in the general fund of the Treasury and transferred to the Asbestos Trust Fund. S. 1893 would provide for repayments to be deposited directly into the trust fund. CBO estimates that repayments of loans from the amounts that would be authorized for appropriation under this bill would total $1 million in fiscal year 1993 and increase to $13 million in each of fiscal years 1994 and 1995. These would appear as offsetting receipts in the budget.

6. Estimated cost to State and local governments: CBO estimates that local education agencies would receive $80 million in grants and $158 million in loans each year. Agencies would be required to repay the loans at no interest within 20 years of disbursement by EPA. The bill requires no matching contribution by the local agencies.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Laura Carter.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirement of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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